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REMARKS

Claims 57 and 72 have been amended to correct minor typographical errors. Claims 57 - 72 remain pending in the present application. No new matter has been added. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

Claims 57 - 72 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mills (U.S. Pat. No. 5,037,021) in view of Solar (U.S. Pat. No. 5,947,983).

Claim 57 recites a stapling unit for an endolumenal stapling system comprising “a housing including a substantially tubular wall and a distal end cap, the housing being slidably coupleable to an endoscope for advancement therewith, the tubular wall including a window extending therethrough with an anvil formed on a first edge of the window, the housing further including *a stapling apparatus mounted within the housing for movement between a stapling position in which a staple firing surface of the stapling apparatus is adjacent to the anvil and a tissue receiving position in which the staple firing surface is separated from the anvil to open the window and expose a tissue receiving cavity within an interior of the housing*, the staple firing apparatus driving a staple out of the staple firing surface through tissue in the tissue receiving cavity” and “a tissue grasping mechanism extendible through the window for drawing tissue through the window into the tissue receiving cavity.”

In contrast, the stapling machine of Mills includes a tissue receiving cavity 202, formed between a piston 205 and an anvil 260, which is pre-loaded with a staple 209 before any tissue is drawn into the cavity 202. (See Mills, col. 6, ll. 9 - 10.) After a double layer of tissue 216 has been suctioned into the cavity 202, a piston 205 is extended into the cavity 202 to push the staple 209 through the tissue 216 and close it over on itself. (See *Id.*, col. 6, ll. 20 - 33; Fig. 5b.) The device of Mills includes no “*stapling apparatus mounted within the housing for movement between a stapling position in which a staple firing surface of the stapling apparatus is adjacent*

to the anvil and a tissue receiving position in which the staple firing surface is separated from the anvil to open the window and expose a tissue receiving cavity within an interior of the housing,” as recited in claim 57. Furthermore, at no time is the staple 209 of Mills driven out of a staple firing surface as recited, as recited in claim 57 (i.e., a surface moveable between a stapling position adjacent to an anvil and a tissue receiving position “separated from the anvil to open the window and expose a tissue receiving cavity”).

The Examiner asserts that the driving action of Mills constitutes driving a staple “out” of the staple firing surface, applying “away” as the ‘ordinary’ definition of the word out. (11/29/06 Office Action, p. 3.) However, it is respectfully submitted that the Examiner has misconstrued the claim language by failing to consider the context in which word “out” is employed in the claim. That is, claim 57 recites a staple firing apparatus “driving a staple *out of* the staple firing surface.” As made clear from this language claim 57 requires that the staple be driven “out of” the staple firing surface not simply driven away from the staple firing surface. Because the staple 209 of Mills is never situated within the piston 205, it cannot be driven out of the piston. Therefore, it is respectfully submitted that Mills does not disclose or suggest a “staple firing apparatus driving a staple *out of* the staple firing surface through tissue in the tissue receiving cavity” as recited in claim 57.

It is respectfully submitted that Solar does not cure the above-described deficiencies of Mills. In fact, Solar does not disclose or suggest the use of staples to bind layers of tissue. Solar describes a coiled needle 140 (shown in Fig. 1C) which is used to suture an opening in a tissue. Thus, it is respectfully submitted that Solar does not disclose or suggest a “staple firing apparatus driving a staple *out of* the staple firing surface through tissue in the tissue receiving cavity,” as recited in claim 57.

Therefore, it is respectfully submitted that neither Mills nor Solar, either alone or in combination, either discloses or suggests a “staple firing apparatus driving a staple *out of* the staple firing surface through tissue in the tissue receiving cavity,” as recited in claim 57. Because

claims 58 - 67 depend from, and, therefore include all of the limitations of claim 57, it is respectfully submitted that these claims are also allowable.

Claim 72 recites limitations substantially similar to claim 57 including “*a stapling apparatus mounted within the housing for movement between a stapling position in which a staple firing surface of the stapling apparatus is adjacent to the anvil and a tissue receiving position in which the staple firing surface is separated from the anvil to open the window and expose a tissue receiving cavity within the housing, the staple firing apparatus driving a staple out of the staple firing surface through tissue in the tissue receiving cavity.*” Thus, it is respectfully submitted that claim 72 is allowable for at least the reasons discussed above with regard to claim 57.

Claim 68 recites a method of endolumenally resecting tissue within a body lumen comprising the steps of “endoscopically locating a portion of tissue to be resected within a body lumen” and “sliding a housing along the endoscope to a desired position adjacent to the portion of tissue to be resected, the housing including a substantially tubular wall and a distal end cap, the tubular wall including a window extending therethrough with an anvil formed on an edge of the window, the housing further including *a stapling apparatus movably mounted therewithin, the stapling apparatus opening and closing the window as it moves within the housing between a tissue receiving position and a stapling position*” in combination with “*moving the stapling apparatus to the tissue receiving position to open the window*” and “*drawing the portion of tissue to be resected into the housing through the window folded over so that two full thicknesses of tissue of a wall of the body lumen are received within the window*” and “*moving the stapling apparatus to the stapling position clamping the portion of tissue to be resected between the stapling apparatus and the anvil*” in combination with “*driving staples from the stapling apparatus through the two thicknesses of wall tissue to couple the two thicknesses of wall tissue to one another*” and “*cutting tissue radially within the stapled tissue from the stapled tissue.*”

As described above, neither Mills nor Solar, either alone or in combination, discloses or

suggests a stapling apparatus movable to open and close a window in a housing. In fact, it is respectfully submitted that Mills shows no member for closing and opening a window to expose a tissue receiving cavity within its housing. In addition, as described in detail above, Mills neither shows nor suggests driving staples from a stapling apparatus through the tissue. Rather, the staple 209 is pre-loaded within the cavity 202 and is simply bent through the tissue while remaining throughout the procedure in substantially the same position relative to the piston 205 - - i.e., in contact with a distal end thereof -- until the piston is withdrawn proximally away from the staple. Thus, it is respectfully submitted that Mills neither shows nor suggests a staple driven from a stapling apparatus movable to open and close a tissue receiving cavity as recited in claim 68 and Solar neither discloses nor suggests using a staple for closing any opening in tissue and neither Mills nor Solar, either alone or in combination, discloses or suggests the method recited in claim 68. Because claims 69 - 71 depend from, and, therefore include all of the limitations of claim 68, it is respectfully submitted that these claims are also allowable for at least the reasons stated above.

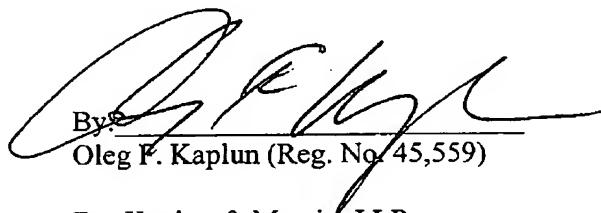
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CONCLUSION

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It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,


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Dated: January 16, 2007